

CITY OF CHARLOTTESVILLE

"A World Class City"



Office of The City Attorney

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December 7, 2016

Brown, Edwards & Company, LLP
124 Newman Avenue
Harrisonburg, Virginia 22801

Confidential & Privileged

RE: City of Charlottesville - Request for Audit Information
Fiscal Year Ending June 30, 2016

Dear Sir or Madam:

By letter to me from Christopher Cullinan, the City's Director of Finance, dated July 14, 2016, received by me on November 2, 2016, our office was asked to identify certain pending or threatened litigation, and certain unasserted claims and assessments, which would relate to your audit. He asked that our response cover material matters as to which our office has been engaged or to which we have devoted substantive attention on behalf of the City in the form of legal consultation or representation. He also asked that our response include matters that existed on June 30, 2016, and those matters arising between that date and the date of our response.

The essence of Mr. Cullinan's request is that we identify "material matters" (items involving amounts exceeding \$100,000 individually or items involving lesser amounts which exceed \$100,000 in the aggregate). This direction is intended to eliminate suits and claims that are so small that they are extremely unlikely to have any adverse effect on the City's fiscal integrity. Given the City's existing general liability insurance coverage¹, and the legal and factual exigencies of each lawsuit, we doubt that any one pending suit is likely to have a substantial adverse effect on the City's fiscal integrity. However, to be conservative and consistent with your \$100,000 definition of materiality, we will report almost every lawsuit against the City that seeks monetary damages. We will omit what we consider at this time to be very minor or frivolous claims that have yet to become lawsuits. In accord with the instructions, definitions, and descriptions contained in Mr. Cullinan's letter and for the time period delineated above, we respond as follows:

¹ The City is insured under the VML Insurance Programs for general liability, police enforcement activities, and public officials errors and omissions coverage in the amount of \$1,000,000 per occurrence plus a \$10,000,000 umbrella policy, with no deductible.

Reporting Date: December 7, 2016
PENDING OR THREATENED LITIGATION
(excluding unasserted claims and assessments)

A. SUITS FILED

1. Gerard Miller v. City of Charlottesville, et al.

Gerard Miller allegedly sustained personal injury on May 26, 2012 when he fell into a storm drain culvert while attempting to find a baseball hit from a nearby Little League baseball field on McIntire Road. Plaintiff filed suit against the City on or about December 17, 2012. The plaintiff voluntarily nonsuited one claim alleging gross negligence, and the Court granted the City's demurrer and dismissed all other counts in the lawsuit. The Plaintiff appealed the decision to the Supreme Court of Virginia, but the Court denied the petition for appeal on November 3, 2015. The plaintiff refiled his claim in Charlottesville Circuit Court on September 15, 2015, alleging gross negligence, but voluntarily dismissed the refiled lawsuit. The case was dismissed by the Circuit Court by Order dated January 25, 2016.

2. Cynthia Gibson v. City of Charlottesville

Cynthia Gibson allegedly suffered an injury to her wrist on January 31, 2013 in a slip and fall accident. Gibson filed suit in Charlottesville Circuit Court demanding \$350,000 in damages, and the City Attorney was served with the Complaint on September 25, 2014. VML Insurance was notified and hired a local law firm, Zunka, Milnor and Carter, as defense counsel to represent the City. After discovery was complete, a settlement was reached and the case was dismissed on October 27, 2016. The settlement was paid in its entirety by VML Insurance.

3. Latron Brown v. Albemarle County and City Police Depts.

Latron Dupree Brown filed a federal lawsuit on or about December 2, 2014 against several Albemarle County and City of Charlottesville police officers alleging excessive force during an arrest on December 19, 2013. VML Insurance Programs was notified of the lawsuit, and Zunka, Milnor and Carter were hired as defense counsel for the named City defendants. In response to the City's Motions to Dismiss and / or Motions for Summary Judgment, the Court dismissed all claims and terminated the case as to all of the City defendants.

4. Charlottesville Parking Center, Inc. v. City of Charlottesville

Charlottesville Parking Center, Inc. ("CPC") and the City of Charlottesville each owns parking spaces in the Water Street Parking Garage. The Garage is managed by a condominium association Board of Directors, with Board members appointed by CPC and the City. In March 2016 CPC filed suit against the City in Charlottesville Circuit Court, alleging that in December 2015 the City had improperly refused to raise the garage parking rates to a level CPC considered to be market rate. In the lawsuit CPC sought \$1,000,000 in damages, and an

injunction against the City's participation in the management of the Garage. A second action was filed by CPC in June 2016, seeking the appointment of an emergency receiver to operate the Garage. The Court granted the City's Demurrer and dismissed the second lawsuit, and CPC did not appeal.

As of this date CPC has not pursued their initial lawsuit that was filed in March. In my opinion the basis for the Court's ruling in the second lawsuit (that the parties are not obligated to set parking rates at fair market rates) precludes CPC from prevailing on their initial claim. With the assistance of outside counsel the City will vigorously oppose CPC's lawsuit, and in my opinion will be successful in defending the claim.

5. Joseph Draego v. City of Charlottesville

Joseph Draego filed suit against the City in federal court on July 28, 2016, alleging the City violated his First and Fourteenth Amendment rights when they limited his speech at a City Council meeting on June 20, 2016. At that meeting Mr. Draego was ruled out of order and escorted from the Council chambers due to his inflammatory remarks about Muslims and their faith, comments that were in violation of City Council rules which prohibited disruptive defamatory attacks on individuals or groups. VML Insurance was notified of the lawsuit and hired the Conrad Law Firm as defense counsel.

On November 18, 2016 the Court issued an opinion and order that concluded that the restriction against defamatory attacks on individuals and groups violated the First Amendment, and issued a preliminary injunction against enforcement of the rule. A trial in the case is currently scheduled for March 2017. Outside counsel is currently exploring the possibility of a settlement with the plaintiff, who is not represented by counsel. He has not alleged any specific damages. If the case does not settle and the plaintiff prevails at trial, in my opinion he will be entitled to nominal damages that will be within the limits of the City's insurance coverage.

6. Tarsha Gerald v. Morgan Minor, et al. D/I: July 13, 2016

Tarsha Gerald filed a federal lawsuit, *pro se*, on September 7, 2016 against Morgan Minor, a social worker employed by the City of Charlottesville, as well as other City social workers and police officers, alleging violation of her constitutional rights. The City Department of Social Services removed her children from her custody on July 18, 2016 on the basis of neglect (she was homeless) and the case is under review by the Juvenile & Domestic Relations Court for the 16th District. VML Insurance hired Zunka, Milnor & Carter as defense counsel, and a response was timely filed. The Plaintiff had until November 22, 2016 to file a response to the City's Motion to Abstain and Motion to Dismiss. In my opinion, any settlement or judgment will not exceed the limits of the City's insurance coverage.

7. Dickerson Homes and Development LLC v. City Planning Commission, et al.

Dickerson Homes filed suit in the Charlottesville Circuit Court on June 10, 2016 against the City, its Planning Commission, and the Director of Neighborhood Development Services

because in April 2016 the Planning Commission denied approval of a site plan for development submitted by Dickerson. The suit also alleges that the site plan denial was a violation of Dickerson's due process rights, and requests an unspecified amount of damages. The Complaint was served on the City on October 6, 2016. VML Insurance was notified and the law firm of Zunka, Milnor & Carter was hired as defense counsel to defend the City. In my opinion, any settlement or judgment will not exceed the limits of the City's insurance coverage.

8. Gene Everette Washington v. J.P. Mooney, et al. (City Police).

Gene Everette Washington was arrested on capital murder charges and is awaiting trial. Washington filed a federal lawsuit, *pro se*, on November 16, 2015, alleging emotional distress and public humiliation because of his arrest, naming several City police officers, the former Chief of Police (Timothy Longo), and the Clerk of the Charlottesville Circuit Court, Llezelle Dugger. VML Insurance was notified, and hired the law firm of Zunka, Milnor and Carter to act as defense counsel. The District Court granted the City's Motion to Dismiss, but on November 2, 2016 the Plaintiff filed a Notice of Appeal to the United States Court of Appeals for the Fourth Circuit. In my opinion, this lawsuit is frivolous and the dismissal by the lower court will be affirmed on appeal. In any event, any settlement or judgment will not exceed the limits of the City's insurance coverage.

The ongoing defense of many of these suits is being handled by outside counsel, who we have identified. Those attorneys can recite more details about the amount of exposure, if any, these suits carry for the City.

B. CLAIMS ONLY

Joanie Raskin. D/I: September 2, 2015

On September 3, 2015 the City received a letter from an attorney representing Ms. Raskin, alleging that she was injured as a result of slipping and falling at the City's Smith Aquatic Center. To date, Ms. Raskin has not pursued the claim. VML Insurance has been notified, and while the extent of Ms. Raskin's injuries is unknown at this time, we do not believe any potential City liability will exceed the limits of the City's insurance coverage.

Minor, Jennifer, on behalf of minor child, Shanesa Minor. D/I: June 25, 2015

Jennifer Minor, mother of a 13 year old girl, sent a Notice of Claim dated September 25, 2015 to the City alleging severe injuries to her daughter on June 25, 2015, when a Police K-9 dog attacked her at a crime scene where she was a bystander. The child was bitten multiple times, and was taken to the hospital for treatment. The claim was referred to VML Insurance on September 30, 2015 and negotiations for settlement are in progress. At this point, under the facts that are known, there appears to be a significant likelihood of City liability in this case. In my opinion, however, any settlement or judgment will not exceed the limits of the City's insurance coverage.

Zan Tewksbury. D/I: April 9, 2015

Ms. Zan Tewksbury, former director of the City Human Rights Commission, alleges through counsel that she sustained damages and suffered emotional distress due to the gross negligence of a City employee. She alleges that on April 9, 2015 her City supervisor directed an alleged mentally unstable person to her office. Ms. Tewksbury alleges that the person exposed himself and made threats of a sexual nature, which caused her to suffer significant emotional pain and economic damages. The notice of claim dated September 17, 2015, was referred to VML Insurance Program for investigation and possible settlement. According to VML Insurance, Ms. Tewksbury has never pursued her claim. In my opinion, the City has valid defenses in this action and any settlement or judgment will not exceed the limits of the City's insurance coverage.

Barbie Berry. D/I: January 12, 2015

Ms. Berry sent the City a Notice of Claim in March 2015 alleging she was injured in a slip and fall accident because of ice on the downtown pedestrian mall. The claim was referred to VML Insurance Programs for investigation, but Ms. Berry has not pursued her claim. In my opinion, any settlement or judgment will not exceed the limits of the City's insurance coverage.

Phillip Turner. D/I: May 26, 2016

Phillip Turner, a city Transit Division employee, filed an OSHA claim against the City for retaliation (discrimination). VML Insurance was notified and they retained Zunka, Milnor & Carter (Elizabeth Southall, Esq.) to represent the City. Ms. Southall filed a position statement on behalf of the City, and the City is currently awaiting a response from OSHA. In my opinion there are valid defenses to this claim, and any settlement or judgment will not exceed the limits of the City's insurance coverage.

Lillie Adkins. D/I: June 17, 2015.

Lillie Adkins allegedly sustained personal injury while a passenger on a City Transit bus on June 17, 2015 when the bus driver had to brake suddenly to avoid a collision with a car. Ms. Adkins suffered minor injuries to her left hand and scalp when she was thrown forward. The City's Transit division informed the Virginia Transit Liability Pool (VTLP) of the incident and a formal Notice of Claim was received December 23, 2015 and sent to VTLP. In my opinion, any settlement or judgment will not exceed the limits of the City's insurance coverage.

Ashley Henderson. D/I: March 2, 2016

Ashley Henderson allegedly sustained personal injury when she was hit on Emmet Street by a vehicle driven by a motorist, who has no association with the City. Ms. Henderson filed a medical payments claim against the City because the City owns the Emmet Street right of way. In my opinion, there are valid defenses to this claim and any settlement or judgment will not exceed the limits of the City's insurance coverage.

Fredrick Smith.

The City was mailed a "Notice of Intent to Litigate" against the City and Police Chief Al Thomas for actions Thomas took while serving as police chief in Lexington, Virginia, before he was hired by the City of Charlottesville. In my opinion, there are valid defenses to this claim and any settlement or judgment will not exceed the limits of the City's insurance coverage.

Christiana Summers. D/I: April 12, 2016

Christiana Summers allegedly suffered personal injury as a passenger in a car hit by a JAUNT vehicle at the intersection of Monticello Avenue and Quarry Road. She may be under 18 since her mother, Kelina Summers, also signed the Notice of Claim letter. The Notice of Claim was sent to VML Insurance on October 10, 2016. VML Insurance has denied claims in the past involving JAUNT buses because JAUNT is a private enterprise.

Tracy Franklin. D/I: July 25, 2015

Tracy Franklin allegedly suffered personal injury as a passenger on a City Transit bus on July 25, 2015 when the bus suddenly accelerated before he reached a seat. The Notice of Claim was received December 14, 2015 and sent to VTLP. In my opinion, any settlement or judgment will not exceed the limits of the City's insurance coverage.

Pursuant to Mr. Cullinan's request, by this letter I confirm his representation to you that there are no unasserted claims and assessments that I consider probable of assertion and, if asserted, to have at least a reasonable possibility of an unfavorable outcome.

The information set forth herein is current as of the date of this letter, except as otherwise noted, and we disclaim any undertaking to advise you of changes which thereafter may be brought to our attention. The City Attorney's Office is a department of City government and represents the City as a municipal corporation. No fees for legal services or expenses are charged to the City of Charlottesville.

This response is limited by and is to be construed in accordance with the ABA Statement of Policy Regarding Lawyers' Responses to Auditors' Requests for Information (December, 1975). Without limiting the generality of the foregoing, this response is limited to matters which have been given substantive attention by our office in the form of legal consultation and, where appropriate, legal representation, for the time period covered by this letter.

This response is solely for your information in connection with your audit of the financial condition of the City and is not to be quoted or otherwise referred to in any financial statement or other document, in whole or in part, or furnished to any other party or agency without our prior written consent. Notwithstanding such limitation, this response may be properly furnished to others in compliance with court process or when necessary in order to defend you against a challenge of the audit by the City or a regulatory agency, provided that we are given written notice of the circumstances at least twenty days before the response is to be furnished to others, or as long in advance as possible if the situation does not permit such period of notice.

Pursuant to Mr. Cullinan's request, we wish to confirm as correct our understanding that whenever, in the course of performing legal services for the City, any attorney in this office forms a professional conclusion that the City must disclose or consider disclosing an unasserted possible claim or assessment, we will so advise the City Manager and Director of Finance and will consult with them concerning the question of such disclosure and the applicable requirements of the Statement of Financial Accounting Standards No. 5 of the AICPA Professional Standards.

Please feel free to contact me if there are any questions regarding the contents of this letter, or if any additional information is needed.

Sincerely yours,

S. Craig Brown
S. Craig Brown
City Attorney

cc: Maurice Jones
Chris Cullinan
City Council

